

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2831 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 - Yes

2 to 5 - No

PARMAR CHAMPAKSINH MULJIBAWA

Versus

STATE OF GUJARAT

Appearance:

MR PB MAJMUDAR for Petitioners

MR UDAY BHATT, ASSTT GOVT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/01/98

ORAL JUDGEMENT (Per: C.K.Thakker,J.)

This petition is filed by the petitioners for an appropriate writ, direction or order quashing and setting aside action of respondent No.2, Special Land Acquisition Officer, Unit No.I, Bharuch of not making reference of petitioners' cases under Sec.18 of the Land Acquisition

Act, 1894 (hereinafter referred to as 'the Act') to a competent Court.

.RS 2

#. The case of the petitioners was that they were owners of the land situated at Village Dahej which were acquired for public purpose, namely, for Dahej Hodi Ghat and Lakhigam Hodi Ghat road. After following procedure prescribed under the Act and issuance of notifications under Secs.4 and 6 of the Act and hearing objections, award was declared on June 28, 1984. Since the petitioners were aggrieved by the amount of compensation determined by the Land Acquisition Officer, an application was made by them to the second respondent requesting him to make reference under Sec.18 of the Act to a competent Court. Said application was rejected by impugned order dated August 14, 1984 only on the ground that the application submitted by the petitioners on August 6, 1984 was time barred.

#. When the petition came up for admission, leave to amend the petition was granted and notice was issued on February 8, 1991 by making it returnable on March 4, 1991. After hearing the parties, rule was issued on April 2, 1991 and the matter was ordered to be heard finally on April 10, 1991. Today, the matter is called out for final hearing.

#. The learned counsel for the petitioners contended that the order passed by respondent No.2 is contrary to law and deserves to be set aside. He submitted that once an award passed by respondent No.2 was not acceptable to the claimants and application was made to make reference to a competent Court under Sec.18 of the Act, it was incumbent on the part of the second respondent to refer the matter to a competent Court and it was not open to him to reject that prayer.

#. True it is that if the application is not made within a stipulated period as required under the Act, he has jurisdiction to reject the application on the ground that it was barred by limitation. In the instant case, however, as stated by the petitioners, that was not the case. It was stated by the petitioners that the petitioners were not present either personally or through their representatives at the time when award was made. No doubt, the petitioners received the amount of compensation but, according to the petitioners, that fact would not come in the way of getting the matter referred to a competent court in accordance with law. It was also their say that a copy of the award was not sent to them.

In light of these circumstances, it was submitted that action taken by the second respondent in rejecting the application was contrary to law and the petition deserves to be allowed by directing the second respondent to pass an order in accordance with law.

#. Though no affidavit is filed, Mr. Bhatt, learned Asstt. Govt. Pleader stated at the Bar that he had a discussion with the Officer concerned who has informed him that claimants were present at the time when award was made. That fact is not stated on oath. But even that fact cannot assist the respondents and authorise respondent No.2 to reject the application on the ground of limitation. As held by the Supreme Court in *State of Punjab Vs. Mst. Qaisar Jehan Begum* and another AIR 1963 SC 1604, the limitation would start running from the date on which the claimant receives a copy of the award. Relying on the said pronouncement, in *Rasulkhanji Sardar Mahomad Khanji Vs. H.P. Rathod*, 3rd Special Land Acquisition Officer, Ahmedabad and another, 16 GLR 911, a Division Bench of this Court held that the award must be brought to the notice of the parties. The expression "date of the award" used in Proviso to Sec.12(2) of the Act must mean "the date when the award was communicated to the party actually or constructively". Essential contents of the award must be brought home to the parties by actually communicating the award. The ratio laid down in *Rasulkhanji Sardar Mahomad Khanji* was reiterated in *Rajat Hirabhai Motibhai & Ors. Vs. Deputy Collector, Land Acquisition & Rehabilitation, Panam Project, Godhra & Ors.* 26(1) GLR 275, wherein a Division Bench observed that the award made by the Land Acquisition Officer must be communicated either entirely or substance thereof to the person concerned and the period of filing reference will commence from service of the award. In the instant case, it is not the case of the respondents that either copy of the award was served upon the claimants or substance thereof was communicated to them. Therefore, even if it is assumed that claimants were present and they accepted the amount of compensation without any protest or objection, their right of making application cannot be denied nor such application be rejected on the ground of limitation.

#. For the foregoing reasons, in our opinion, petition deserves to be allowed and is accordingly allowed. Order passed by the Special Land Acquisition Officer rejecting the application of the petitioners is hereby quashed and set aside. The second respondent will pass an appropriate order as expeditiously as possible preferably within four weeks from the receipt of the

writ. Rule is made absolute to the above extent with no
order as to costs.

Sd/-

(C.K.Thakker,J.)

Sd/-

Dt: 28-01-1998 (R.P.Dholakia,J.)

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